

SPECIAL COUNCIL MEETING

JULY 10, 2013

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, July 10, 2013 at 2:05 p.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable Jay Furfaro

Excused: Honorable Tim Bynum
Honorable JoAnn A. Yukimura

APPROVAL OF AGENDA.

Mr. Kagawa moved for approval of the agenda as circulated, seconded by Ms. Nakamura, and carried by a vote of 5:0:2 (Mr. Bynum and Ms. Yukimura were excused.)

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Clerk: Council Chair, we have ES-654.

ES-654 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment on Counts II and III and Granting in Part and Denying in Part Defendants' Counter Motion for Summary Judgment on Counts II and III regarding Kaua'i Beach Villas – Phase II, LLC vs. County of Kaua'i, et al., (Civil No. 12-00483, United States District Court, Hawai'i District). This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the rules were suspended to take public comment.

RICH HOEPPNER: I have expressed my concerns here before about public agencies doing their functions lawfully, and you have heard me talked about that. As I understand it a Federal Court has decided that there is a State law that we did not know about when we did the Charter Amendment and that law is Hawai'i Revised Statutes (HRS) 46-4 giving responsibility for zoning and those types of things to the County legislative process and not by the County Charter initiative process. That law should be followed but I disagree with the idea that the Court decision should be appealed. The 912 ordinance should have been passed by other Council's many years ago creating management development on Kaua'i. This Council now has the opportunity to fulfill its responsibility to the citizens of Kaua'i to pass an ordinance and it has been referred to as "Son of 912," because it is what the voters want as evidence by the 64 to 36 turn out on the 2008 vote. You should pass this "Son of 912" not because it was required by County Charter – a simple wording change in the original 912 ordinance will do what the Courts will accept. We will have the management of development that should have been done years ago and the time and efforts spent by many of us to get that thing passed will not be wasted. So, it is going to be a real simple matter. You folks on the Council can pass an ordinance legislatively that the Court requires by just changing one (1) sentence in what you passed on 912 and it will be legal. As I understand it. Of course you are going to get some input from Attorney's on that, I am sure, but we spent a lot of time and the Council at the time and the acting Mayor at the time was dead set against the Charter Amendment. The County spent like fifty thousand dollars (\$50,000) to get it stopped on additional legal information. Then acting County Clerk refused to put it on the ballot the way it was supposed to be with a synopsis. So, now you folks have the opportunity to pass something that should have been done years ago just by changing a line in the original 912 ordinance.

Chair Furfaro: Rich that was your first three (3) minutes. You have an additional three (3) minutes.

Mr. Hoeppner: That is all I have to say. Thank you.

Chair Furfaro: Okay. Anyone else wish to speak on this Executive Session matter?

DAVID DINNER: I appreciate the opportunity to testify today before you on ordinance 912. I am joined in my testimony with Carl Imparato, who is off-island; he is also the co-Chairman of Citizens for Responsible Government (CRG) and is on an important family business. In order to not miss anything, I am going to read this. As you know, in 2008 CRG developed a Charter Amendment to bring growth of transient accommodation rentals in line with the percentages stipulated in the Kaua'i General Plan. That amendment was passed by over sixty percent (60%) of the voters, as Rich related to, in the 2008 election and was followed just two (2) years ago by passage by the County Council of Ordinance 912. So, that is a little bit of the history.

Recently the District Court, as you know, decreed that the Charter Amendment is unconstitutional and that Ordinance 912 is invalid because it is linked to the Charter Amendment.

The Coalition for Responsible Government believes that the Court was mistaken in mischaracterizing the 2008 Charter amendment as legally-impermissible "zoning by initiative." In truth, the amendment simply transferred authority from an irresponsible Planning Commission to a voter-elected County

Council. That is what the Charter Amendment did. In Court, the County Attorney mounted a very creditable defense and we are confident that the County would prevail on appeal.

The ordinance simply amended the Comprehensive Zoning Ordinance with a process to pace the rate of approval of new tourist accommodations. I hope that you will note during the Executive Session that the Court was very careful to state that it did not rule that the substance of Ordinance 912 is illegal. Rather, the Court simply pointed out that because Ordinance 912 was passed with a linkage to the Charter Amendment, it was invalid. The Court ruling said, "this Court emphasizes that in ruling that Section 3.19 and Ordinance No. 912 are invalid, this Court expresses no opinion as to whether the TAU classification and permitting process are well thought out or whether they are in the best interests of the County and its people. Those questions are not for this Court to decide."

As it stands already Kaua'i has three thousand (3,000) tourist units approved but not built on the books, an increase of thirty percent (30%) above our present number. Ordinance 912 gave us a tool to control excessive tourist development into the future; developments like Coco Palms, Hanalei Ridge and others which threaten to choke our island even more with traffic and construction.

Chair Furfaro: That was your first three (3) minutes. I am going to give you a second three (3) minutes.

Mr. Dinner: Thank you. In 2008, the voters spoke by nearly two (2) to one (1) margin to say that they were concerned with the Planning Commissions disrespect for the vision of the General Plan and mismanagement of the runaway growth in tourism. Our beaches, parks, traffic, and overall quality of life on Kaua'i is clearly of great concern to the voters and we implore the Council to fill the void left by the Court's decision by first appealing the decision to a higher Court. Second, by passing immediately a new Bill that is not linked to the Charter Amendment to replace ordinance 912. The Ordinance was good for Kaua'i then and it is good for Kaua'i now. Procrastination will likely be damaging. We cannot afford time for unnecessary studies or elaborate delay while new developments have time to be proposed. Please appeal the Court decision now and take expeditious simple steps to a new Ordinance. Feel free to call upon CRG for any assistance we can give. Carl was clear to offer that as well. I think that is all I really want to say. I think that one of the reasons we want you to do both – appeal the decision and get a new Ordinance is that they are not completely distinct. The Charter Amendment has some issues into the future that the Ordinance does not contain. The Ordinance, I think, takes care of maybe ten (10) or twenty (20) years but the Charter Amendment is long-term. Any questions? I sure appreciate it. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Thank you. Is there anyone in the audience that wishes to testify on the item read in this Special Council for the purpose of going into Executive Session before I call for the vote? No. On that note, may I have the County Attorney up to read off the approach to go into Executive Session?

ALFRED B. CASTILLO, JR., County Attorney: Good afternoon Council Chair and Councilmembers. Council Chair if I may, number two (2) was already read. Do you want me to read number one (1) and number three (3)?

Chair Furfaro: Yes.

Mr. Castillo: Thank you. ES-653 and ES-655.

ES-653 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing regarding Association of Apartment Owners of Kulana vs. Travelers Casualty and Surety Company of America; County of Kaua'i, (Civil No. 12-0027) and related Cross-claims and Counterclaims. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-655 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney, on behalf of the Director of Finance, requests an executive session with the Council to provide the Council with a briefing and request for approval of proposed tax compromise with AOA of Kulana Condominium, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order and proceeded as follows:

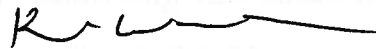
Mr. Kagawa moved to convene in Executive Session for ES-653, ES-654, and ES-655, seconded by Ms. Nakamura and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Furfaro	TOTAL - 5,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Bynum, Yukimura	TOTAL - 2,
RECUSED & NOT VOTING:	None	TOTAL - 0.

ADJOURNMENT.

There being no further business, the Special Council Meeting adjourned at 2:20 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

:dmc